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State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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June 8, 1992

CERTIFIED RETURN RECEIPT REQUESTED
No. P 540 713 900

W. Hord Tipton, Deputy Director
Office of Surface Mining
Department of the Interior
1951 Constitution Avenue N.W.
Washington, D.C. 20240

Dear Mr. Tipton:

Re: Ten-Day Notice X92-02-352-003 TV1, Bear Canyon Mine,
ACT/015/025, Co-Op Mining Company, Emery County, Utah

In accordance with the provisions of 30 CFR 842.11(b)(iii)(A), I am requesting an informal appeal of OSM's finding that DOGM's response to the above-referenced Ten-Day Notice is arbitrary and capricious.

This TDN was issued for: "Failure to provide cross sections of diversions. All diversions except D-1D, D-2D and D-7D."
"Section of the regulations believed to have been violated: R645-301-722.2."

I have provided two separate responses to the AFO on this TDN, and am providing copies of each for your consideration in this informal appeal.

My first response (April 22, 1992) indicated that data frequently provided in cross section form are found tabularized in the MRP. The AFO's May 8, 1992 response, chose to ignore pragmatic appeal of the tabularized data, and threatened a 732 action on Utah for failure to have regulations that are less effective than those in the 30 CFR. OSM provided Utah an additional 10 days to respond to the May 8, 1992 letter.

My second response (May 22, 1992) provided the regulatory detail directed towards the 732 issue, while affirming that no hinderance to inspection exists via tabularizing diversion data required under R645-301-722.2. This letter also stated that since there is discretion in the need for certification under the Utah Program, the cross section regulation that is the subject of the TDN is satisfying a need to illustrate a field situation that is not hindered by tabularization of data.

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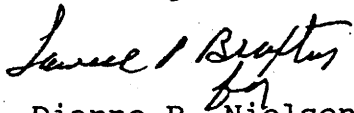
The AFO's June 1992 letter in response to DOGM's May 22, 1992 TDN response, indicates that OSM reviewed the tabularized data, and is both confused by the information contained in the table, and feels the data are not accurate. Similar questions arise when cross sections are evaluated. My point that no hinderance to inspection exists by evaluating the tabularized data appears to be well taken.

R645-301-712 reads "Certification. All cross sections, maps and plans required by R645-301-722 as appropriate (emphasis added) and R645-301-731.700 will be prepared and certified according to R645-301-512." The AFO clearly has not considered the "as appropriate" language in the regulation cited in the TDN, nor has this discretion been considered in the portion of the inappropriate response letter that states that all cross sections must be certified.

In appealing the TDN, I ask that tabularization of data required under R645-301-722.2 be found an acceptable option to the cross section requirements under this regulation. Please consider the argument established in my April 22 and May 22, 1992 letters (enclosed) when rendering your appeal decision. I believe the inappropriate response finding made by the AFO's June 1992 letter is made more on the basis of OSM's inability to interpret data in the tables, than a disagreement with the use of the table. I would certainly be willing to visit the data in the tables to assure their adequacy with respect to R645-301-722.2, but this issue and the certification issue were not raised in the original TDN, the subject of this appeal.

In considering the appeal of this TDN, you should note that there is no allegation of an on-the-ground performance standard violation in the language of the TDN. The adequacy of the data in the tables in the MRP, to satisfy the regulation cited in the TDN, is the issue. As discussed in the meetings held in Lexington May 5 and 6, these types of informational requests are not well served by the TDN process.

Best regards,


Dianne R. Nielson
Director

vb
Enclosures
cc: L. Braxton
tdnapbc3